

Conn Credit I, LP vs Sherman Originator III, LLC
TODD MOUNTS on 10/26/2016

UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF TEXAS

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4 CONN CREDIT I, LP,

5 Plaintiff,

Civil Action No. 4:15-cv-3713

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7 SHERMAN ORIGINATOR III,
LLC.

8

Defendant

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2 VIDEOTAPED
DEPOSITION OF: TODD MOUNTS

DATE TAKEN: October 26, 2016

TIME: 9:06 a.m. - 12:18 p.m.

6 PLACE: 111 North Orange Avenue
Suite 1800
Orlando, Florida 32801

8 REPORTED BY: STACY PACE, RPR, CRR, FPR
Court Reporter and Notary Public

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Conn Credit I, LP vs Sherman Originator III, LLC
TODD MOUNTS on 10/26/2016

Page 17

1 level of the business. But, yes, I -- it would be
2 reasonable to assume that, but I don't know the
3 specifics of it.

4 Q Okay. For this document specifically, Exhibit
5 94, the date is April 30th of 2014?

6 A Uh-huh.

7 Q And it references, if you look at Ed Storey's
8 email, a wire transaction.

9 Who is Ed Storey, by the way?

10 A Ed Storey was outside counsel we utilized for
11 this transaction.

12 Q If you look at the following page, 91- --
13 Bates stamp 9135, there's an email from an Alexandra
14 Michelini?

15 A Yes.

16 Q She's counsel for Trax?

17 A Yes. She was in-house counsel for Trax
18 Capital at that time.

19 Q And she references an executed signature page
20 to the PSA?

21 A Yes.

22 Q Is this -- this document appears that the
23 transaction with Conn was closed on April 30th of 2014.
24 Is that consistent with your recollection?

25 A Yes. That's -- the first -- the first portion

Conn Credit I, LP vs Sherman Originator III, LLC
TODD MOUNTS on 10/26/2016

Page 18

1 which was, I believe, the bulk --

2 Q Okay.

3 A -- or that was the title that was utilized.

4 So that was the -- the vast majority of the transaction
5 was closed on April 30th.

6 Q So this, what's reflected in Exhibit 94 is the
7 bulk closing with Conn, correct?

8 A Yes, but the -- the agree- -- the PSA
9 agreement incorporated future flows or additional
10 purchases, so -- but the closing was, you know, a
11 multi-layered transaction. So it wasn't -- it was all
12 incorporated within the purchase and sale agreement for
13 additional purchases to come.

14 Q Yeah. And that is exactly where I'm headed
15 now. Again, and the purposes of this is just to set
16 some markers. So bulk closing on April 30th...

17 (Exhibit Number 95 marked for identification.)

18 BY MR. HEINEN:

19 Q And you can set 94 aside.

20 I'm handing you what's been marked as Exhibit
21 95 (handing). And take a minute to look it over.

22 A (Reviewing document.)

23 Q Do you recognize this document?

24 A I do.

25 Q And what is it?

Conn Credit I, LP vs Sherman Originator III, LLC
TODD MOUNTS on 10/26/2016

Page 19

1 A This appears to be the second portion -- or
2 second closing that occurred subsequent to April 30th.
3 So this would be the closing of the flows one and two
4 identified within our purchase and sale agreement.

5 Q And what's the date?

6 A May 9th.

7 Q Okay. So the bulk closing April 30th of 2014
8 and then flows one and two on May 9th of 2014?

9 A Correct.

10 Q Okay. You can set that one aside.

11 Mr. Mounts, for the bulk and flows one and
12 two, TF LoanCo paid Conn in full for those account
13 deliveries, correct?

14 A Yes.

15 Q And between May 9th of 2014, when flows one
16 and two were closed, and September of 2014, did anyone
17 at TF LoanCo ever tell anyone at Conn that TF LoanCo's
18 financial condition was an impediment to clo- -- future
19 closings with Conn?

20 A No.

21 Q Between May 9, 2014, and September 2014, did
22 anyone at TF LoanCo ever tell anyone at Conn that they
23 were unable to fund future account deliveries from Conn?

24 A Not that I'm aware of.

25 Q Did anyone ever say to Conn that TF LoanCo was

1 having trouble securing financing for future closings?

2 A Not to my knowledge.

3 Q Anyone at TF LoanCo ever say to Conn that
4 TF LoanCo didn't have sufficient cash to fund future
5 closings?

6 A Not to my knowledge.

7 Q You mentioned earlier Garnet Capital that you
8 interacted with in the context of this transaction?

9 A Correct.

10 Q Between May 9, 2014, and September 2014, did
11 anyone at TF LoanCo ever tell anyone at Garnet that they
12 were unable to fund future account deliveries from Conn?

13 A Not that I'm aware of.

14 Q All right. So what happened next after TF
15 LoanCo took delivery of the first three purchases from
16 Conn?

17 A We transferred all the documents necessary to
18 the collection arm, JNR, to initiate the collection
19 activity on the accounts.

20 Q And what were the results the first month or
21 so of collection activity? And I'm speaking generally,
22 not the specific financial results.

23 A We just -- I mean, we encountered a fair
24 number of issues across the board with, you know, some
25 of the accounts where parties were coming up deceased in

1 excess of three, four, five years; a number of multiple
2 accounts where, you know, customers had said they were
3 making payments in person at the stores, come to find
4 out they had four or five different accounts.

5 Hard to tell how they were allocating the
6 funds. I mean, I -- the issues are numerous. But those
7 are just, you know, some -- some of the ones off the top
8 of my head, but... You know, payments that weren't
9 being applied correctly. I mean, just all kind of
10 things.

11 **Q And we'll review some of them in detail, but**
12 **sounds like, fair to say, a number of issues cropped up?**

13 A Yes. I mean, it's -- it's not -- yes, a
14 number of issues that, you know --

15 **Q Do you recall how quickly after the closings**
16 **on May 9, 2014, issues started to pop up?**

17 A I don't recall specifically. It wasn't --
18 I -- I don't recall exactly.

19 **Q Within the first month?**

20 A Yeah, that's fair -- that's a fair assumption.
21 I mean, within the first month, at least, would be a
22 reasonable estimate.

23 **Q And when TF LoanCo began to encounter these**
24 **issues, did it raise them with Garnet and with Conn?**

25 A Yes.

1 I think you may have mention this briefly
2 before. Can you explain that issue?

3 A I mean, I was essentially just trying to
4 determine what -- what Conn's wanted to be produced as
5 adequate proof for the buy-back that the borrower is
6 deceased.

7 And Accurint is just a -- it's just a quick
8 like one-page sort of credit pull or credit inquiry that
9 identifies the person as being deceased. So I think
10 that we were asking if that was sufficient evidence for
11 the buy-back.

12 Q Was TF LoanCo encountering a number of
13 accounts that belonged to deceased individuals?

14 A Yes.

15 Q And should those accounts have been included
16 in the loan portfolio from Conn?

17 A No.

18 Q The issues that we've discussed in Exhibit 63,
19 were any of those issues at all related to TF LoanCo not
20 being able to come up with enough money to fund future
21 account deliveries from Conn?

22 MR. MONTGOMERY: Form.

23 THE WITNESS: We've never -- we never ever
24 mentioned that as being an issue, not having the
25 money to fund.

1 BY MR. HEINEN:

2 Q Did you or anyone from TF LoanCo tell Conn or
3 Garnet at the time of this email, in June of 2014, that
4 TF LoanCo was unable to fund future deliveries?

5 A No.

6 Q Did you tell Conn anything about funding
7 future deliveries at this time?

8 A I don't re- -- I don't recall speaking with
9 Conn's about the deliveries. But we had a schedule in
10 the purchase and sale agreement that allowed us to
11 defer. And so some of those communications were vetted
12 through Garnet. But there was never a conveyance of
13 lack of funds to do any of the closings.

14 Q You can set that one aside.

15 I'm handing you what's been marked previously
16 (handing) as Exhibit 64 to this matter. Do you
17 recognize this document?

18 A Yeah. It appears familiar to me.

19 Q What is it?

20 A It's an email that was facilitated from
21 myself, both to Garnet and several parties over at
22 Conn's.

23 Q And what's the date on the first email?

24 A July 2, 2014.

25 Q This email is dated about a month after

Conn Credit I, LP vs Sherman Originator III, LLC
TODD MOUNTS on 10/26/2016

Page 30

1 **Q And why was it an issue for TF LoanCo that**
2 **there were examples that hadn't been, in your**
3 **estimation, adequately scrubbed?**

4 **A It's just -- it's a provocative -- sort of a**
5 **provocative behavior to willingly or knowingly or**
6 **actively try to collect on these type -- some of these**
7 **type of accounts. Definitely puts yourself in harm's**
8 **way legally.**

9 **Q What do you mean by that?**

10 **A Just increases the propensity of being, you**
11 **know, sued for some issue.**

12 **Q Sued by a consumer?**

13 **A A debtor, yes.**

14 **Q Was this issue related to TF LoanCo not being**
15 **able to come up with enough money for future account**
16 **deliveries?**

17 **A That's, again, never been -- it was never an**
18 **issue, lack of funds. The issues were more of the**
19 **breaches of the reps and warranties that were provided**
20 **in the purchase and sale agreement by Conn's.**

21 **Q So did anyone from TF LoanCo tell Conn or**
22 **Garnet at this time that it was unable to fund future**
23 **deliveries?**

24 **A Not that I'm aware.**

25 **Q All right. You can set that one aside.**

1 Q By this time -- this email is dated July 11th
2 of 2014 -- did you think that the accounts you received
3 from Conn matched up with what they had represented to
4 be in the offering memorandum and marketing materials?

5 MR. MONTGOMERY: Form.

6 THE WITNESS: I don't think that it was -- no,
7 I don't.

8 BY MR. HEINEN:

9 Q Why not?

10 A It just -- it didn't -- didn't fit the
11 description of what was marketed.

12 Q Would you be a little more specific? In what
13 way?

14 A Everything that was proposed is not being
15 included -- appeared to have been included in the sale.
16 That's, I guess, as descriptive as I can be, because
17 there's -- the issues are limitless with -- within that
18 portfolio.

19 Q Did you or anyone from TF LoanCo tell Conn or
20 Garnet in connection with these issues that TF LoanCo
21 was unable to fund future account deliveries?

22 A No.

23 Q Did you tell Conn or Garnet anything at this
24 time about funding future account deliveries?

25 A We never conveyed that there was a lack

1 A I -- which bullet point, I'm sorry?

2 Q Number seven. My question is, what did you
3 mean by uncollectible accounts?

4 A Real- -- I mean, uncollectible and
5 unenforceable are kind of one and the same, perhaps not
6 your unanimously defined. But that's -- that was an
7 error on my part; I should have put unenforceable.

8 Q And can you explain a little bit about what
9 unenforceable meant to TF LoanCo?

10 A It's --

11 MR. KAMIN: Objection, form.

12 THE WITNESS: I mean, it's -- you know, absent
13 giving a legal definition on that, I mean, just --
14 it wasn't -- you know, the excess of a
15 settled-in-full account, you know, if it was
16 performed by both parties, it's not -- it's not
17 what you would characterize as an unenforceable
18 account if you've already accepted less than the
19 existing balance. So that's just one of many
20 numerous examples, but --

21 BY MR. HEINEN:

22 Q Is that because TF LoanCo couldn't attempt to
23 collect on that account?

24 A Again, that's another legal interpretation I'm
25 not really qualified to give. It's just -- it's not

1 recommended for certain -- the legalities of it. That's
2 why God invented attorneys.

3 Q Unfortunately, right?

4 I don't want to give -- I don't want to ask
5 you to make any legal interpretations. I'm just trying
6 to get at: When you said uncollectible accounts in this
7 agenda, what were you trying to convey to Conn?

8 MR. MONTGOMERY: Objection to form.

9 THE WITNESS: It -- there was more than one --
10 in other words, there's no -- no uniler- (sic) --
11 universally defined example of that, so -- it's
12 sort of a broad statement. It's just accounts that
13 we did not willingly participate in collecting on
14 and wasn't what -- what we were portrayed to have
15 purchased.

16 BY MR. HEINEN:

17 Q Number eight on the same agenda says: Discuss
18 the various regulatory issues and potential fines,
19 slash, penalties that may be probable as a result of
20 selling the various accounts above.

21 What does that mean?

22 A I don't recall specifically, to be honest with
23 you.

24 Q Do you recall why TF LoanCo was raising
25 regulatory issues and potential fines, slash, penalties?

1 mean, there was probably a few in each -- each
2 bullet.

3 BY MR. HEINEN:

4 Q All right. Number ten on this same list says:
5 Need additional information on the various insurance
6 billing processes, slash, procedures.

7 A Yes, I see that.

8 Q What type of insurance was TF LoanCo asking
9 for information about?

10 A This was the credit insurance that was
11 included in some of the accounts. There were a claim or
12 two that had come up, and we were given the information
13 to facilitate the processing of the claim. So on -- we
14 were just -- we were just asking for more information
15 with regard to some of those accounts.

16 Q Okay. Take a look at number 13 on that same
17 list. It says: Discuss and propose changes, slash,
18 amendments as appropriate in an effort to improve the
19 collection efforts.

20 Do you see that?

21 A Yeah.

22 Q Was TF LoanCo planning to continue purchasing
23 account deliveries assuming these issues could be
24 resolved?

25 A That was the purpose of the meeting, as I

Conn Credit I, LP vs Sherman Originator III, LLC
TODD MOUNTS on 10/26/2016

Page 40

1 recall, was to try to address some items that -- that
2 weren't adequately addressed.

3 Q And did you or anyone from TF LoanCo tell Conn
4 or Garnet, in connection with this agenda, that TF
5 LoanCo was unable to fund future account deliveries?

6 A Not to my knowledge.

7 Q What did you tell Conn at this time about
8 funding future account deliveries?

9 A The only message that had been conveyed with
10 regard to that was deferring to a later date, which was
11 allowed.

12 Q And did you tell any -- Conn anything at this
13 time about closing on future account deliveries,
14 generally?

15 A Only deferring those closings.

16 Q Eventually, after a number of these
17 negotiations, TF LoanCo sent Conn a formal letter from
18 its attorneys regarding some of these issues, correct?

19 A Yes.

20 Q I'm handing you (handing) what's been
21 previously marked as Exhibit 66, and 67 (handing), in
22 this matter. If you could take a look at those and let
23 me know when you're ready to answer a couple of
24 questions.

25 A (Reviewing documents.) Okay.

Conn Credit I, LP vs Sherman Originator III, LLC
TODD MOUNTS on 10/26/2016

Page 42

1 paragraph C. It says: Seller misrepresented the gross
2 balance of the accounts that were sold.

3 And it lists a number of specific types.

4 Later in the paragraph it says: Many of these
5 accounts are invalid and unenforceable constituting a
6 breach of section 8.6 of the agreement.

7 In TF LoanCo's opinion, why were these
8 accounts invalid and unenforceable?

9 MR. KAMIN: I'm going to object to you
10 testifying on behalf of what TF LoanCo's opinion
11 is. If you're here in your individual capacity,
12 you can testify. But you're not to testify what TF
13 LoanCo was thinking.

14 MR. HEINEN: Let me rephrase.

15 BY MR. HEINEN:

16 Q Mr. Mounts, do you recall why -- or did you
17 consider some of the accounts purchased from Conn to be
18 unenforceable?

19 A In my professional experience, I considered
20 them to be unenforceable, yes.

21 Q Why was that?

22 A If you've taken in a life insurance payment on
23 a deceased debtor, whatever those proceeds were,
24 that's -- you know, the excess balance of that is not
25 a -- an enforceable debt. The debtor is deceased.

Conn Credit I, LP vs Sherman Originator III, LLC
TODD MOUNTS on 10/26/2016

Page 43

1 So that was, again, one of many issues raised
2 in bullet point C. But that's my professional
3 experience, that's not a enforceable valid debt that
4 would be sold or collected upon. It's a practice that's
5 shunned.

6 Q Okay. If you take a look at Exhibit 67. I'll
7 direct you to paragraph D, which is on the second page,
8 Bates stamped CONNS 12164.

9 If you take a look at the -- it's actually the
10 second paragraph under point D.

11 A (Reviewing document.) Okay.

12 Q My question is: It appears in that paragraph
13 that Conn is agreeing -- or at least is not disputing
14 that there were some deceased and bankrupt accounts
15 included in the accounts sold to TF LoanCo.

16 Is that consistent with your understanding?

17 A As -- as I understand it, yes.

18 Q Okay.

19 MR. MONTGOMERY: I'm sorry, could you repeat
20 that question -- would the court reporter reread
21 that question? I missed it, I apologize.

22 (Requested portion of the record was read back
23 by the court reporter.)

24 MR. MONTGOMERY: Sorry about that.

25

Conn Credit I, LP vs Sherman Originator III, LLC
TODD MOUNTS on 10/26/2016

Page 52

1 Q Many of the issues on the list are ones that
2 have come up on -- on previous emails.

3 By August 19th of 2014, from your perspective,
4 had these issues still not been resolved by Conn?

5 A I don't believe so.

6 Q But was TF LoanCo still trying to work with
7 Conn to resolve those issues?

8 A Yes.

9 Q And had the issues been resolved, could TF
10 LoanCo had funded future account deliveries, financially
11 speaking?

12 MR. MONTGOMERY: Form.

13 MR. KAMIN: Form.

14 THE WITNESS: Yeah, I don't think the
15 financial issue was the issue. It was more along
16 the lines of the breaches that we were trying to
17 address.

18 BY MR. HEINEN:

19 Q In your opinion had these issues been
20 resolved, would TF LoanCo have closed on future
21 account deliveries?

22 MR. KAMIN: Objection to form.

23 MR. MONTGOMERY: Objection, form.

24 THE WITNESS: I can't answer that, to be
25 honest.

Conn Credit I, LP vs Sherman Originator III, LLC
TODD MOUNTS on 10/26/2016

Page 53

1 BY MR. HEINEN:

2 Q At this time in August of 2014, did anyone
3 from TF LoanCo tell Conn or Garnet that they did not --
4 that it did not have sufficient funds to accept another
5 loan delivery?

6 A Not that I'm aware of.

7 Q Did anyone from TF LoanCo tell Conn or Garnet
8 they were unable to fund future account deliveries?

9 A Not that I'm aware of.

10 Q TF LoanCo eventually refused to close on any
11 additional account deliveries from Conn; is that right?

12 MR. KAMIN: Objection, form.

13 THE WITNESS: I don't -- can you repeat that
14 one more -- I -- I don't recall that being the
15 case, but --

16 BY MR. HEINEN:

17 Q Let me ask it this way: After the May 9, 2014
18 closing of flows one and two that we discussed
19 previously, did TF LoanCo ever close on another delivery
20 of accounts from Conn?

21 A No, we did not.

22 Q Did that have anything to do with any
23 financing issues?

24 MR. MONTGOMERY: Form.

25 THE WITNESS: Not to my knowledge.

Conn Credit I, LP vs Sherman Originator III, LLC
TODD MOUNTS on 10/26/2016

Page 54

1 BY MR. HEINEN:

2 Q Why did TF LoanCo not close on another account
3 delivery from Conn?

4 MR. MONTGOMERY: Form.

5 THE WITNESS: Because of the breaches under
6 the purchase and sale agreement, specifically the
7 reps and warranties.

8 BY MR. HEINEN:

9 Q Then in August of 2014 Conn sued TF LoanCo; is
10 that correct?

11 A Yes.

12 Q You can set that one aside.

13 All right, Mr. Mounts, I think I have just one
14 more issue I want to talk to you about.

15 A number of the accounts TF LoanCo purchased
16 from Conn had repair service agreements and other
17 warranty products included with them. Is that your
18 understanding?

19 A Yes.

20 Q And are you familiar at all with Conn's
21 policies regarding repair service agreements?

22 A Not -- I mean, not specifically. I mean...

23 Q And I'll be more specific: Do you know at
24 Conn's, at the time that TF LoanCo purchased accounts,
25 what happens to a repair service agreement when an